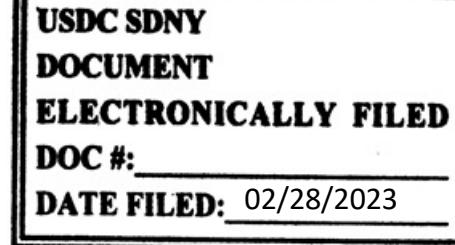


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MIGUEL GONZALEZ,
X



Petitioner,

-against-

NEW YORK STATE DEPT. OF CORRECTIONS
COMMUNITY SUPERVISION,

Respondent.
X

ORDER
21-CV-2914-JHR-KHP

KATHARINE H. PARKER, United States Magistrate Judge.

On February 9, 2022, Petitioner filed a CPL § 440.10 motion ("440.10 motion") in state court challenging the same conviction that he challenges in the underlying habeas petition in this action. Petitioner requested a stay of his federal habeas proceeding pending a resolution of the 440.10 motion. On September 1, 2022, the Supreme Court of the City of New York denied Petitioner's 440.10 motion. On November 1, 2022, this Court granted Petitioner's requested stay pending his appeal of the denial of his 440.10 motion ("440.10 appeal"). (ECF No. 40.) On December 19, 2022, Petitioner advised the Court that he had sought leave to file a 440.10 appeal. (ECF No. 43.)

On February 23, 2023, Petitioner filed a status letter advising the Court that he is still awaiting a response regarding his application to file a 440.10 appeal. (ECF No. 47.) The letter also requests that Petitioner be produced to be present at any hearings held in this action. Petitioner is advised that no hearing has been scheduled in this action. In the event the Undersigned schedules a hearing in this matter, I will conduct any such hearing telephonically so that Petitioner may attend.

Additionally, on February 28, 2023, Respondent filed a status letter stating that Petitioner's application to file a 440.10 appeal "is pending" in the New York State Supreme Court, Appellate Division, First Department. (ECF No. 48.)

In light of the parties' representations that Petitioner's state court appeal remains pending, this action will remain stayed. On **Tuesday, March 28, 2023**, Respondent shall file a status letter updating the Court on the status of Petitioner's application for leave to appeal the denial of his 440.10 motion.

The Clerk of the Court is respectfully directed to mail a copy of this order to the Petitioner.

SO ORDERED

Date: February 28, 2023
New York, NY

Katharine H. Parker
KATHARINE H. PARKER
United States Magistrate Judge